

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
CHEMICAL PROCESSORS, INC.

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB NO. 84-297

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

THIS MATTER, the appeal of a \$1,000 civil penalty for violation of respondent agency's Regulation I, Section 9.09(b)(1) by causing or allowing the emission of excess particulate, as disclosed in Agency Source Test No. 84-4, came on for hearing before the Pollution Control Hearings Board; Lawrence J. Faulk (presiding) and Wick Dufford on March 29, 1985, at Lacey, Washington. Gayle Rothrock has reviewed the entire record in this matter and joins in this opinion. The respondent agency elected a formal hearing, pursuant to RCW 43.21B.230.

Appellant, Chemical Processors, Inc. appeared through its attorney

1 William D. Maer. Respondent Puget Sound Air Pollution Control Agency  
2 (PSAPCA) appeared by its attorney Keith McGoffin. The proceedings  
3 were reported by Marie Dillon, Court Reporter.

4 Witnesses were sworn and testified. Exhibits were admitted and  
5 examined. Argument was heard. From the testimony, evidence and  
6 argument, the Board makes these

#### 7 FINDINGS OF FACT

##### 8 I

9 Respondent, pursuant to RCW 43.21B.260, has filed with the Board a  
10 certified copy of Regulation I and all amendments thereto, which is  
11 noticed.

##### 12 II

13 Appellant company operates a contaminated chemical processing  
14 plant in south Seattle and has fueled its pipe furnace with No.  
15 diesel oil, reclaimed oils, and solvents. The emissions from the pipe  
16 furnace are subject to air pollution regulation by respondent Puget  
17 Sound Air Pollution Control Agency (PSAPCA). The plant is located in  
18 a non-attainment area for national ambient air quality standards for  
19 particulates.

##### 20 III

21 PSAPCA has developed standards for particulate emissions from  
22 industrial sources, and employs inspectors to monitor industries.  
23 Field samples of appellant's fuel revealed high ash and chlorine  
24 content. Severe corrosion had been observed in the furnace stack.  
25 These factors prompted PSAPCA in early July 1984 to order that a

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1 source test be conducted on the pipe furnace of appellant's plant at  
2 734 South Lucille, Seattle, Washington.

3 The purpose of the test was to determine the concentration and  
4 quality of particulate emissions from appellant's pipe furnace, and  
5 determine whether the emissions were within relevant standards.

6 Appellant company was not advised that the results of the test  
7 might be used for enforcement purposes. The stack corrosion and fuel  
8 content concerns were not discussed with the company prior to the test.

9 IV

10 On July 26, 1984, three source tests were conducted at the company  
11 plant by measuring the concentrations and rate of emissions from  
12 appellant's pipe furnace. The measurements were in grains per dry  
13 standard cubic foot and pounds per hour. The tests were performed by  
14 an experienced professional, qualified to conduct such tests.

15 V

16 On August 20, 1984, the test results were sent to appellant  
17 company. The concentration and emission rate measured on the three  
18 tests were as follows: Run I - 0.101, Run II - 0.122 and Run III -  
19 0.128 gr/dscf (0.57, 0.52 and 0.43 lbs/hr respectively). The average  
20 of the three tests was 0.117 gr/dscf and 0.51 lbs/hr. The  
21 concentrations were adjusted to 12 percent carbon dioxide.

22 Respondent indicated that the concentration exceeded Section  
23 9.09(b)(1) of Regulation I which allows .10 grains for each standard  
24 cubic foot of exhaust gas. (Letter dated August 20, 1984).

VI

On August 27, 1984, respondent sent appellant a notice of violation number 20330. Following this event, on September 24, 1984, respondent sent appellant Notice and Civil Penalty No. 6134 assessing a fine of \$1,000 for the violations of the concentration standard which showed in the Source Test results. Appellant received this notice and order of civil penalty on September 24, 1984. From this the appellant company appealed to the Board on October 23, 1984.

VII

Appellant's expert witness disputed the results of the three source tests by respondent and the methods by which they were conducted. He testified that the tests should be redone both for increased accuracy and to be technically representative of the emissions coming from appellant's pipe furnace smoke.

The inspector who conducted the tests for PSAPCA, himself an expert in such matters, described and defended the conduct of the tests and the reliability of the results. The Board finds that the tests were properly conducted and accepts the results.

VIII

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact the Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over these persons and these matters.

FINAL FINDINGS OF FACT,  
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1 Chapters 43.21B and 70.94 RCW.

2 II

3 The Board denies respondent's motion to dismiss this appeal on  
4 grounds of timeliness. The fact that the appeal was not filed on time  
5 with respondent agency is not fatal to the appeal. The appeal was  
6 received by the Board within the 30 days allowed by the law.

7 III

8 Appellant company did burn fuels on July 26, 1984, in normal  
9 operation, such that concentrations of emissions from appellant's  
10 plant exceeded the pertinent regulatory standard set forth at  
11 Regulation I, Section 9.09(b)(1):

12 It shall be unlawful for any person to cause  
13 or allow the emission of particulate matter if  
14 the emission is in violation of section 9.03  
15 or if the particulate matter discharged into  
the atmosphere from any single source exceeds  
the following weights at the point of  
discharge:

16 (b)(1) In fuel burning equipment, 0.10  
17 grains per each standard cubic foot of exhaust  
gas calculated to 12 percent carbon dioxide.

18 IV

19 This event was recorded during a source test done for purposes of  
20 ascertaining typical concentrations from fuel used in normal plant  
21 operation and, apparently, for monitoring an industrial source.  
22 However, the results achieved by respondent agency and appellant's  
23 expert witness as their respective tests are vastly different.

24 In addition, it is not clear that appellant was not informed that  
25 if he did not pass the test, he would be fined \$1,000. There was no

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1 showing by the agency that such information was clearly conveyed  
2 during the time of preparation for testing.

3 Though appellant was not warned that the test would be used for  
4 enforcement purposes, the law is a strict liability statute which  
5 requires compliance with standards at all times.

6 In any event, appellant had every opportunity here to prepare for  
7 the test and insure the plant was operating at peak efficiency.

8 V

9 A maximum penalty, for excess emissions should be levied when  
10 circumstances indicate a significant violation and the violator's  
11 conduct evidences disinterest in compliance. Here neither are the  
12 case. The exceedence was slight. The company has shown a strong  
13 interest in correcting any problems.

14 It is true that appellant company has previously been penalize  
15 for failing a source test at this plant site, but on that occasion  
16 (February 20, 1984) the violation was far more extreme. Moreover, in  
17 the present instance, the company officials thought they were  
18 cooperating in adding to the Agency's information on fuel burning to  
19 help in reviewing the sufficiency of current standards.

20 Therefore, a portion of the penalty should be suspended, bearing  
21 in mind that the violation did occur in a non-attainment area.

22 VI

23 While not determinative of the question of legal liability, the  
24 agency should consider advising regulated entities in advance that  
25 source test results can be used for enforcement purposes. Such notice

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1 is appropriate not just as a matter of public relations but also as a  
2 matter of fairness.

3 VII

4 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
5 adopted as such.

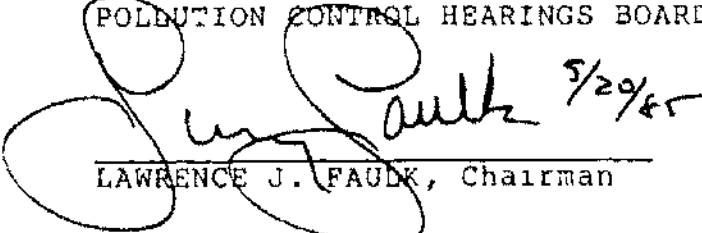
6 From these Conclusions of Law the Board enters this  
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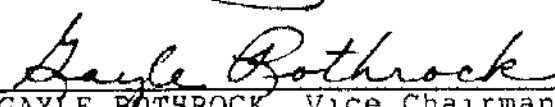
ORDER

Notice and Order of Civil Penalty No. 6134 is affirmed; provided however that \$500 of the amount is suspended on condition appellant not violate respondent's Regulation I, Section 9.09(b)(1) for a period of one year from the date this Order is entered.

DONE this 23rd day of May, 1985.

POLLUTION CONTROL HEARINGS BOARD

 5/29/85  
LAWRENCE J. FAULK, Chairman

  
GAYLE ROTHROCK, Vice Chairman

  
WICK DUFFORD, Lawyer Member